IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 620 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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R M JOSHI

Versus

STATE OF GUJARAT

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Appearance:

MR PV HATHI for Petitioner

Miss Sejal Mandavia, AGP, for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/04/96

ORAL JUDGEMENT

The petitioner has challenged in this petition the order of the Government dated 6.11.85 ordering reduction of Rs.100 per month with permanent effect from his pension. This order has been passed after holding departmental inquiry. The chargesheet was given to the petitioner on 15.2.82. The petitioner retired on 28th February, 1982. The departmental inquiry initiated under rule 6 of the

Gujarat Civil Services (Discipline and Appeal) Rules, 1971 was converted into one under rule 189-A of the Bombay Civil Services Rules. The petitioner filed reply to the chargesheet. Special Officer for departmental inquiry was appointed for inquiry. On 28th July 1982, the Inquiry Officer submitted his report to the State Government and the Inquiry Officer found that the Government has not suffered any loss as no payment was made to the agriculturists, but recorded finding of guilt of negligence of the petitioner. On 5.9.83, a show cause notice was issued to the petitioner as to why 50% of his pension and gratuity should not be withheld/reduced. The petitioner submitted reply to the show cause notice on 17.9.83. The order of penalty as aforesaid came to be passed on 6.11.85. Hence this writ petition.

2. The learned counsel for the petitioner Mr P.V. Hathi has made four contentions in this case. It is first contended that the provisions of Rule 189-A is not attracted and could not have been made applicable in the facts and circumstances of the case as no financial loss was suffered by the Government and no misconduct was held proved. It is next contended that even if the Court proceeds on the assumption that rule 189 applies and that the inquiry was competent under the said rule, the facts show only lapse or mistakes not amounting to any misconduct as contemplated by rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971. It is next submitted that in any case, there is no evidence against the petitioner and the finding of guilt which has been recorded is perverse and unreasonable. Lastly it is argued that in any case, penalty imposed is excessive and harsh and it is disproportionate to the guilt of negligence proved against the petitioner.

3. Miss Sejal Mandavia, on the other hand, supported the order passed by the Government.

4. I have considered the contentions of the learned counsel for the parties.

5. The petitioner was posted in the office of the Land Acquisition Officer as Deputy Mamlatdar. In March, 1972, the Land Acquisition Officer had expired. After his death, the petitioner prepared a supplementary memorandum in the form of an award making amendment about the nature of the land and additional compensation, though he was not competent to do so. Not only he prepared the aforesaid memorandum in the form of award bue he also signed it as the Land Acquisition Officer. On 9th April 1996, during the course of the argument,

Shri P.V. Hathi made a statement that the petitioner has only signed the memorandum in the form of the award, but the said memorandum in the form of an award was prepared by the then Land Acquisition Officer. To ascertain this fact, I directed the counsel for the respondent to bring the relevant record. The record has been brought and wherefrom it comes out that the petitioner has not only signed the memorandum in the form the an award, but also he himself drawn that memorandum. The learned counsel for the petitioner accepts this factual position. The amount of the supplementary award was Rs.1,84,866.04 ps. It is a serious case where the petitioner had no authority to draw a supplementary award and sign the same. The petitioner admits that he signed the supplementary award. But defence has been that on coming to know about his mistake, he himself on telephone intimated to the authority competent to make the payment of award not to make the payment of the said award. In support of this defence, the petitioner has not produced any evidence whatsoever. He only says that he informed on telephone to the concerned authority not to make payment on the said supplementary memorandum. Though the Inquiry Officer has accepted this defence, the Disciplinary Authority did not accept it and rightly so. The finding of the Inquiry Officer is not binding on the disciplinary authority and it has given cogent reasons to disagree with the findings of the Inquiry Officer. The Disciplinary Authority has given cogent reasons not to accept the finding of the Inquiry Officer on this aspect. It is right to say that the petitioner had not produced any evidence in support of the defence. It is very easy and convenient to take such a plea. The petitioner who is interested in the matter and a delinquent can take such plea and the Disciplinary Authority has rightly disbelieved it as the petitioner failed to substantiate the same by any evidence. The petitioner was a sufficiently senior person in the department and the plea that he has signed the supplementary award by mistake is difficulty to accept. It is not a case where he only signed the memorandum of supplementary award, but he himself has drawn the memorandum of supplementary award. What for he has done all these things, he was not competent to do so and being a sufficiently senior officer, a Deputy Mamlatdar, working the office in the Land Acquisition Officer should have known all these things. He did all these things when, it is equally important to notice, after the death of the Land Acquisition Officer. It cannot be said to be a case of mistake as tried to be projected by the petitioner. It is a case where a deliberate attempt has been made by the petitioner to favour the agriculturists whose lands have

been acquired. It is not a case of sheer negligence, but a serious misconduct. It is a different matter that the amount could not have been paid. Otherwise, the petitioner has made all attempts to see that the amount is paid. Another defence taken by the petitioner that he was not fully aware of the rules of the revenue cadre as he was from the development cadre has rightly been rejected by the disciplinary authority. The Disciplinary Authority has given him personal hearing and a finding of fact has been recorded that the petitioner has acted unauthorisedly in issuing the supplementary memorandum. This Court will not sit in appeal over the finding of the Disciplinary Authority as appellate authority. It will also not go into the sufficiency of the evidence. The fact remains that the defence which has been taken by the petitioner is not substantiated by any evidence. The petitioner has not produced any evidence in defence. Before the Inquiry Officer, the petitioner has made a categorical statement that "he did not want to produce the witnesses for defence". The finding of the Inquiry Officer that the petitioner intimated the Executive Engineer not to make the payment is perverse. There is no evidence to support this version. He has not examined the concerned Executive Engineer to substantiate the defence. In view of these facts, it cannot be said that the finding of guilt recorded by the Disciplinary Authority is perverse.

6. The first contention of the learned counsel for the petitioner does not have any substance. Rule 189-A of the Bombay Civil Services Rules nowhere contemplates that punishment can only be given when a misconduct has resulted in financial loss to the Government. A mere reading of rule 189-A of BCSR gives out that in case due to a misconduct the Government has suffered financial loss, in addition to giving of penalty, the Government can also recover the loss from the delinquent. So far as the second contention of the petitioner is concerned, it is a serious lapse on the part of the petitioner and it is not a case of error or mistake as tried to be projected. The last submission of the learned counsel for the petitioner that the penalty imposed is excessive and harsh and it is disproportionate to the guilt of negligence proved is not tenable. Sitting under Article 226 of the Constitution of India, this Court has a very limited judicial power of review in the matter of penalty to be imposed by the Disciplinary Authority or an Appellate Authority for the proved misconduct of the delinquent. The Court can only interfere with the punishment where it is shocking to the conscience of the Court. As stated earlier, the petitioner committed a

serious misconduct. It is fortunate for the Government that it has been detected at a stage earlier to the making of payment of compensation to the agriculturists. Otherwise, the amount would have been disbursed and the Government would have certainly suffered financial loss. It is not a simple mistake or error. It is not a case of merely signing of supplementary memorandum already prepared, but he himself prepared the same and signed it. Taking into consideration the totality of facts, I do not consider it to be a case where the punishment given to the petitioner is excessive or harsh or is disproportionate to the guilt.

7. In the result, this writ petition fails and the same is dismissed. Rule discharged. Interim relief stands vacated with no order as to costs.

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